

House Engrossed

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
First Regular Session  
2001

CHAPTER 44

# HOUSE BILL 2279

AN ACT

AMENDING SECTIONS 14-2114, 14-2402, 14-2403, 14-2404, 14-2603, 14-2711, 14-3105, 14-3306, 14-3938, 14-3971, 14-5312 AND 14-6214, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-6102 AND 14-6103; REPEALING SECTIONS 14-6215 AND 14-6309, ARIZONA REVISED STATUTES; RELATING TO TRUSTS, ESTATES AND PROTECTIVE PROCEEDINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 14-2114, Arizona Revised Statutes, is amended to read:

14-2114. Parent and child relationship; intestate succession; adopted children

A. Except as provided in subsections B and C of this section, for the purposes of intestate succession, a person is the child of that person's natural parents, regardless of their marital status. If this issue is in dispute the court shall establish that relationship under title 25, chapter 6, article 1.

B. An adopted person is the child of that person's adopting parent or parents and not of the natural parents. Adoption of a child by the spouse of either natural parent has no effect on the relationship between the child and that natural parent or on the right of the child or a descendant of the child to inherit from or through the other natural parent.

C. Inheritance from or through a child by either natural parent or the child's NATURAL PARENT'S kindred is precluded unless that natural parent has openly treated the child as a natural child and has not refused to support the child.

Sec. 2. Section 14-2402, Arizona Revised Statutes, is amended to read:

14-2402. Homestead allowance

A. A decedent's surviving spouse is entitled to a homestead allowance of eighteen thousand dollars. If there is no surviving spouse each minor child and each dependent child of the decedent are entitled to a homestead allowance of eighteen thousand dollars divided by the number of minor and dependent children of the decedent.

B. The homestead allowance is exempt from and has priority over all claims against the estate, except expenses of administration.

C. The homestead allowance is chargeable against any benefit or share that passes TO THE SURVIVING SPOUSE OR MINOR OR DEPENDENT CHILD by the decedent's will, BY NONPROBATE TRANSFER PURSUANT TO SECTION 14-6102 or by intestate succession ~~to the surviving spouse or minor or dependent child,~~ unless IT IS otherwise provided by the DECEDENT'S will OR BY THE GOVERNING INSTRUMENT FOR A NONPROBATE TRANSFER. TO DETERMINE THE HOMESTEAD ALLOWANCE UNDER THIS SECTION, A SURVIVORSHIP INTEREST IN A JOINT TENANCY OF REAL ESTATE IS CONSIDERED A NONPROBATE TRANSFER PURSUANT TO SECTION 14-6102.

Sec. 3. Section 14-2403, Arizona Revised Statutes, is amended to read:

14-2403. Exempt property; value; priority

A. In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value that is not more than seven thousand dollars in excess of any security interests in that estate in the following:

1. Household furniture.
2. Automobiles.
3. Furnishings.

1           4. Appliances.

2           5. Personal effects.

3           B. If there is no surviving spouse the decedent's MINOR AND DEPENDENT  
4 children are entitled jointly to the same value as prescribed in subsection  
5 A OF THIS SECTION.

6           C. If encumbered chattels are selected and the value in excess of  
7 security interests and that of other exempt property is less than seven  
8 thousand dollars or if there is not seven thousand dollars worth of exempt  
9 property in the estate, the spouse or MINOR OR DEPENDENT children are  
10 entitled to any other assets of the estate to the extent necessary to make  
11 up the seven thousand dollar value.

12           D. Rights to exempt property and assets needed to make up a deficiency  
13 of exempt property have priority over all claims against the estate except  
14 expenses of administration. The right to any assets to make up a deficiency  
15 of exempt property abates as necessary to permit earlier payment of THE  
16 homestead allowance and family allowance. These rights are chargeable  
17 against any benefit or share passing to the surviving spouse or MINOR OR  
18 DEPENDENT children by the decedent's will BY A NONPROBATE TRANSFER PURSUANT  
19 TO SECTION 14-6102 OR BY INTESTATE SUCCESSION, unless otherwise provided by  
20 the DECEDENT'S will, ~~or by intestate succession~~ OR BY THE GOVERNING  
21 INSTRUMENT FOR A NONPROBATE TRANSFER.

22           Sec. 4. Section 14-2404, Arizona Revised Statutes, is amended to read:  
23           14-2404. Family allowance; use; length; priority; termination  
24                               by death

25           A. The decedent's surviving spouse and minor children whom the  
26 decedent was obligated to support and children who were in fact being  
27 supported by the decedent are entitled to a reasonable allowance in money out  
28 of the estate for their maintenance during the period of  
29 administration. This allowance shall not continue for longer than one year  
30 if the estate is inadequate to discharge allowed claims. The allowance may  
31 be paid as a lump sum or in periodic installments. It is payable to the  
32 surviving spouse, if living, for the use of the surviving spouse and minor  
33 and dependent children. Otherwise this allowance is payable to the children  
34 or to persons who have the care and custody of these children. If a minor  
35 child or a dependent child is not living with the surviving spouse, the  
36 allowance may be made partially to the child or the child's guardian or other  
37 person who has the care and custody of the child and partially to the spouse,  
38 as their needs may appear.

39           B. The family allowance is exempt from and has priority over all  
40 claims except expenses of administration and except the homestead allowance.

41           C. The family allowance is chargeable against any benefit or share  
42 passing to the surviving spouse or children by the DECEDENT'S will ~~of the~~  
43 decedent, BY A NONPROBATE TRANSFER PURSUANT TO SECTION 14-6102 OR BY  
44 INTESTATE SUCCESSION unless otherwise provided by the DECEDENT'S will or by  
45 ~~intestate succession~~ THE GOVERNING INSTRUMENT FOR A NONPROBATE TRANSFER.

1 D. The death of a person entitled to the family allowance terminates  
2 the right to allowances not yet paid.

3 Sec. 5. Section 14-2603, Arizona Revised Statutes, is amended to read:  
4 14-2603. Substitute gifts; class gifts; definitions

5 A. If a devisee fails to survive the testator and is a grandparent,  
6 a descendant of a grandparent or a stepchild of either the testator or the  
7 donor of a power of appointment exercised by the testator's will, the  
8 following apply:

9 1. Except as provided in paragraph 3 of this subsection, if the devise  
10 is not in the form of a class gift and the deceased devisee leaves surviving  
11 descendants, a substitute gift is created in the devisee's surviving  
12 descendants and they take, by representation, the property to which the  
13 devisee would have been entitled if the devisee had survived the testator.

14 2. Except as provided in paragraph 3 of this subsection, if the devise  
15 is in the form of a class gift, other than a devise to issue, descendants,  
16 heirs of the body, heirs, next of kin, relatives or family or a class  
17 described by similar language, a substitute gift is created in the surviving  
18 descendants of the deceased devisee. The property to which the devisees  
19 would have been entitled if all of them had survived the testator passes to  
20 the surviving devisees and the surviving descendants of the deceased  
21 devisees. Each surviving devisee takes the share to which that person would  
22 have been entitled if the deceased devisees had survived the testator. Each  
23 deceased devisee's surviving descendants who are substituted for the deceased  
24 devisee take by representation the share to which the deceased devisee would  
25 have been entitled if the deceased devisee had survived the testator. For  
26 the purposes of this paragraph, "deceased devisee" means a class member who  
27 failed to survive the testator and left one or more surviving descendants.

28 3. If the will creates an alternative devise with respect to a devise  
29 for which a substitute gift is created by paragraph 1 or 2 of this  
30 subsection, the substitute gift is superseded by the alternative devise,  
31 whether or not an expressly designated devisee of the alternative devise is  
32 entitled to take under the will.

33 B. Unless the language that creates a power of appointment expressly  
34 prohibits the substitution of the appointee's descendants for the appointee,  
35 a surviving descendant of a deceased appointee can be substituted for the  
36 appointee, whether or not the descendant is an object of the power of  
37 appointment.

38 C. For the purposes of section 14-2601, words of survivorship, such  
39 as in a devise to an individual "if he survives me", or in a devise to "my  
40 surviving children", are, in the absence of clear and convincing evidence to  
41 the contrary, a sufficient indication of an intent contrary to the  
42 application of this section.

43 D. For the purposes of this section:

44 1. "Alternative devise" means a devise that is expressly created by  
45 the will and under the terms of the will can take effect instead of another

1 devise on the happening of one or more events, including the survival of the  
2 testator or the failure to survive the testator, whether an event is  
3 expressed in condition-precedent, condition-subsequent or any other form. A  
4 residuary clause may constitute an alternative devise with respect to a  
5 nonresiduary devise, whether or not the will specifically provides that, on  
6 lapse or failure, the nonresiduary devise or nonresiduary devises in general  
7 pass under the residuary clause.

8 2. "Class member" includes a person who fails to survive the testator  
9 but who would have taken under a devise in the form of a class gift if that  
10 person had survived the testator.

11 3. "Devise" includes an alternative devise, a devise in the form of  
12 a class gift and an exercise of a power of appointment.

13 4. "Devisee" includes:

14 (a) A class member if the devise is in the form of a class gift.

15 (b) A person or class member who was deceased at the time the testator  
16 executed the will as well as a person or class member who was then living but  
17 who failed to survive the testator.

18 (c) An appointee under a power of appointment exercised by the  
19 testator's will.

20 5. "Stepchild" means a child of the surviving, deceased or former  
21 spouse of the testator or of the donor of a power of appointment and not of  
22 the testator or donor.

23 6. "Surviving devisee" or "surviving descendant" means a devisee or  
24 a descendant who neither predeceased the testator nor is deemed to have  
25 predeceased the testator under section 14-2702.

26 7. "Testator" includes the donee of a power of appointment if the  
27 power is exercised in the testator's will.

28 Sec. 6. Section 14-2711, Arizona Revised Statutes, is amended to read:  
29 14-2711. Distribution to heirs; effect

30 A. If an applicable statute or a governing instrument calls for a  
31 present or future distribution to or creates a present or future interest in  
32 a designated individual's heirs, heirs at law, next of kin, relatives, or  
33 family, or by similar language, the property passes to those persons,  
34 including the state, ~~and in those shares that would succeed to WHO WOULD~~  
35 ~~INHERIT~~ the designated person's INDIVIDUAL'S intestate estate under the  
36 intestate succession law of the designated person's INDIVIDUAL'S domicile if  
37 the designated person INDIVIDUAL died when the disposition is to take effect  
38 in possession or enjoyment. THE PROPERTY PASSES TO THOSE PERSONS IN THE  
39 PROPORTION DESCRIBED BY THE LAWS OF INTESTATE SUCCESSION.

40 B. If the designated person's INDIVIDUAL'S surviving spouse is living  
41 but is remarried at the time the disposition is to take effect in possession  
42 or enjoyment, the surviving spouse is not an heir of the designated person  
43 INDIVIDUAL.

1       Sec. 7. Section 14-3105, Arizona Revised Statutes, is amended to read:  
2       14-3105. Proceedings affecting devolution and administration;  
3       jurisdiction of subject matter

4       A. Persons interested in decedents' estates may apply to the registrar  
5 for determination in the informal proceedings provided in this chapter, and  
6 may petition the court for orders in formal proceedings within the court's  
7 jurisdiction including but not limited to those described in this article.

8       B. The court may hear and determine any matter affecting the  
9 administration and distribution of decedents' estates after notice to  
10 interested persons in conformity with section 14-1401 and only in a formal  
11 proceeding. Persons notified are bound though less than all interested  
12 persons may have been given notice.

13       C. The court has general jurisdiction that it may exercise in a formal  
14 proceeding in any other action or proceeding concerning succession or to  
15 which an estate, through a personal representative, may be a party,  
16 including:

17       1. Actions to determine title or to quiet title to property alleged  
18 to belong to the estate.

19       2. Actions for personal injury and wrongful death.

20       3. Actions to quiet title of property that belongs to the estate.

21       4. Actions against third parties to recover estate assets.

22       5. Any action or proceeding in which property distributed by a  
23 personal representative or its value is sought to be subjected to rights of  
24 creditors or successors of the decedent.

25       ~~D. A proceeding brought under subsection B of this section is governed~~  
26 ~~by the rules of civil procedure.~~

27       Sec. 8. Section 14-3306, Arizona Revised Statutes, is amended to read:  
28       14-3306. Informal probate; notice requirements

29       A. ~~The moving party~~ APPLICANT must give notice as described by section  
30 14-1401 of ~~his~~ THE APPLICANT'S application for informal probate:

31       1. To any person demanding it pursuant to section 14-3204.

32       2. To any personal representative of the decedent whose appointment  
33 has not been terminated. No other notice need be given prior to issuance of  
34 a statement of informal probate by the registrar.

35       B. Upon ON issuance of a statement of informal probate, the applicant  
36 must within ten THIRTY days give written information to all heirs and  
37 devisees of the admission of the will to probate, together with a copy of the  
38 will. The information shall describe the court where papers relating to the  
39 estate are on file and state that an heir has four months from receipt of the  
40 information within which to commence a formal testacy proceeding if he THE  
41 HEIR wishes to contest the probate. If a personal representative has been  
42 appointed, the information given pursuant to this section may be combined  
43 with the information required by section 14-3705 and may in that case be  
44 given by either the applicant or the personal representative on behalf of  
45 both. This information shall be delivered or sent by mail to each of the

1 heirs and devisees whose address is reasonably available to the applicant.  
2 An heir to whom the information is given is barred from commencing a formal  
3 testacy proceeding to contest the probate of the will after four months have  
4 elapsed from receipt of the information;—, but he AN HEIR is not barred from  
5 commencing a formal testacy proceeding to probate a later discovered will.  
6 An heir to whom the information is not given may contest the informal probate  
7 within the time limit specified in section 14-3108. The applicant shall be  
8 liable to any heir or devisee damaged by failure to comply with this  
9 subsection. An applicant's failure to give information as required by this  
10 section is a breach of his THE APPLICANT'S duty to the heirs and devisees but  
11 does not affect the validity of the probate.

12 Sec. 9. Section 14-3938, Arizona Revised Statutes, is amended to read:

13 14-3938. Subsequent administration

14 If other property of the estate is discovered after an estate has been  
15 settled and the personal representative has been discharged or after one year  
16 after a closing statement has been filed, the registrar, if the original  
17 application was or could have been brought under article 2— 3 of this  
18 chapter, or the court, if the original petition was required to have been  
19 brought under article 4 or 5 of this chapter, on the application or petition  
20 of any interested person and on notice as provided in THIS chapter 3 of this  
21 title, may appoint the same or a successor personal representative to  
22 administer the subsequently discovered estate. If a new appointment is made,  
23 unless the court orders otherwise, the provisions of this title apply as  
24 appropriate, but a claim previously barred may not be asserted in the  
25 subsequent administration.

26 Sec. 10. Section 14-3971, Arizona Revised Statutes, is amended to  
27 read:

28 14-3971. Collection of personal property by affidavit;  
29 ownership of vehicles; affidavit of succession to  
30 real property

31 A. At any time after the death of a decedent, any employer owing  
32 wages, salary or other compensation for personal services of the decedent  
33 shall pay to the surviving spouse of the decedent the amount owing, not in  
34 excess of five thousand dollars, on being presented an affidavit made by or  
35 on behalf of the spouse stating that the affiant is the surviving spouse of  
36 the decedent, or is authorized to act on behalf of the spouse, and that no  
37 application or petition for the appointment of a personal representative is  
38 pending or has been granted in this state or, if granted, the personal  
39 representative has been discharged or more than one year has elapsed since  
40 a closing statement has been filed.

41 B. Thirty days after the death of a decedent, any person indebted to  
42 the decedent or having possession of tangible personal property or an  
43 instrument evidencing a debt, obligation, stock or chose in action belonging  
44 to the decedent shall make payment of the indebtedness or deliver the  
45 tangible personal property or an instrument evidencing a debt, obligation,

1 stock or chose in action to a person claiming to be the successor of the  
2 decedent upon being presented an affidavit made by or on behalf of the  
3 successor and stating that all of the following are true:

4 ~~1. The value of all of the personal property in the decedent's estate,~~  
5 ~~wherever located, less liens and encumbrances, does not exceed fifty thousand~~  
6 ~~dollars.~~

7 ~~2. 1. Thirty days have elapsed since the death of the decedent.~~

8 ~~3. 2. EITHER:~~

9 (a) AN application or petition for the appointment of a personal  
10 representative is not pending or ~~has not been granted in any jurisdiction or,~~  
11 ~~if granted, the~~ AND A PERSONAL REPRESENTATIVE HAS NOT BEEN APPOINTED IN ANY  
12 JURISDICTION AND THE VALUE OF ALL PERSONAL PROPERTY IN THE DECEDENT'S ESTATE,  
13 WHEREVER LOCATED, LESS LIENS AND ENCUMBRANCES, DOES NOT EXCEED FIFTY THOUSAND  
14 DOLLARS AS VALUED AS OF THE DATE OF DEATH.

15 (b) THE personal representative has been discharged or more than one  
16 year has elapsed since a closing statement has been filed and ~~that the amount~~  
17 ~~set forth in this subsection,~~ AND THE VALUE OF ALL PERSONAL PROPERTY IN THE  
18 DECEDENT'S ESTATE, WHEREVER LOCATED, LESS LIENS AND ENCUMBRANCES, DOES NOT  
19 EXCEED FIFTY THOUSAND DOLLARS AS VALUED as of the date of the affidavit, ~~is~~  
20 ~~not being exceeded.~~

21 ~~4. 3. The claiming successor is entitled to payment or delivery of~~  
22 ~~the property.~~

23 C. A transfer agent of any security shall change the registered  
24 ownership on the books of a corporation from the decedent to the successor  
25 or successors on presentation of an affidavit pursuant to subsection B of  
26 this section.

27 D. The motor vehicle division shall transfer title of a motor vehicle  
28 from the decedent to the successor or successors on presentation of an  
29 affidavit as provided in subsection B of this section and on payment of the  
30 necessary fees.

31 E. No sooner than six months after the death of a decedent, a person  
32 or persons claiming as successor or successors to the decedent's interest in  
33 real property, including any debt secured by a lien on real property, may  
34 file in the court in the county in which the decedent was domiciled at the  
35 time of death, or if the decedent was not domiciled in this state then in any  
36 county in which real property of the decedent is located, an affidavit  
37 describing the real property and the interest of the decedent in that  
38 property and stating that all of the following are true AND MATERIAL AND  
39 ACKNOWLEDGING THAT ANY FALSE STATEMENT IN THE AFFIDAVIT MAY SUBJECT THE  
40 PERSON OR PERSONS TO PENALTIES RELATING TO PERJURY AND SUBORNATION OF  
41 PERJURY:

42 1. EITHER:

43 (a) AN APPLICATION OR PETITION FOR THE APPOINTMENT OF A PERSONAL  
44 REPRESENTATIVE IS NOT PENDING AND A PERSONAL REPRESENTATIVE HAS NOT BEEN  
45 APPOINTED IN ANY JURISDICTION AND the value of all real property in the



1 decedent's estate located in this state, less liens and encumbrances against  
2 the real property ~~as of the date of death~~, does not exceed fifty thousand  
3 dollars AS VALUED AT THE DATE OF DEATH. The value of the decedent's interest  
4 IN THAT REAL PROPERTY shall be determined from the full cash value of the  
5 property as shown on the assessment rolls for the year in which the decedent  
6 died, except that in the case of a debt secured by a lien on real property  
7 the value shall be determined by the unpaid principal balance due on the debt  
8 as of the date of death.

9 (b) THE PERSONAL REPRESENTATIVE HAS BEEN DISCHARGED OR MORE THAN ONE  
10 YEAR HAS ELAPSED SINCE A CLOSING STATEMENT HAS BEEN FILED AND THE VALUE OF  
11 ALL REAL PROPERTY IN THE DECEDENT'S ESTATE, WHEREVER LOCATED, LESS LIENS AND  
12 ENCUMBRANCES, DOES NOT EXCEED FIFTY THOUSAND DOLLARS AS VALUED AS OF THE DATE  
13 OF THE AFFIDAVIT. THE VALUE OF THE DECEDENT'S INTEREST IN THAT REAL PROPERTY  
14 IS DETERMINED FROM THE FULL CASH VALUE OF THE PROPERTY AS SHOWN ON THE  
15 ASSESSMENT ROLLS FOR THE YEAR IN WHICH THE AFFIDAVIT IS GIVEN, EXCEPT THAT  
16 IF A DEBT IS SECURED BY A LIEN ON REAL PROPERTY, THE VALUE IS DETERMINED BY  
17 THE UNPAID PRINCIPAL BALANCE DUE ON THE DEBT AS OF THE DATE OF THE AFFIDAVIT.

18 2. Six months have elapsed since the death of the decedent as shown  
19 in a certified copy of the decedent's death certificate attached to the  
20 affidavit.

21 ~~3. An application or petition for appointment of a personal~~  
22 ~~representative is not pending or has not been granted in any jurisdiction or,~~  
23 ~~if granted, the personal representative has been discharged or more than one~~  
24 ~~year has elapsed since a closing statement has been filed and that the amount~~  
25 ~~set forth in this subsection, as of the date of the affidavit, is not being~~  
26 ~~exceeded.~~

27 ~~4.~~ 3. Funeral expenses, expenses of last illness, and all unsecured  
28 debts of the decedent have been paid.

29 ~~5.~~ 4. The person or persons signing the affidavit are entitled to the  
30 real property by reason of the allowance in lieu of homestead, exempt  
31 property or family allowance, by intestate succession as the sole heir or  
32 heirs, or by devise under a valid last will of the decedent, the original of  
33 which is attached to the affidavit or has been probated.

34 ~~6.~~ 5. No other person has a right to the interest of the decedent in  
35 the described property.

36 ~~7.~~ 6. No federal or Arizona estate tax is due on the decedent's  
37 estate.

38 ~~8. The person or persons signing the affidavit affirm that all~~  
39 ~~statements in the affidavit are true and material and further acknowledge~~  
40 ~~that any false statement may subject the person or persons to penalties~~  
41 ~~relating to perjury and subornation of perjury.~~

42 F. The normal filing fee shall be charged for the filing of an  
43 affidavit under subsection E of this section unless waived by the court as  
44 provided by section 12-301 or 12-302. On receipt of the affidavit and after  
45 determining that the affidavit is complete, the registrar shall cause to be

1 issued a certified copy of the affidavit without attachments, and the copy  
2 shall be recorded in the office of the recorder in the county where the real  
3 property is located.

4 G. Nothing in this section shall limit the rights of heirs and  
5 devisees under section 14-3901.

6 Sec. 11. Section 14-5312, Arizona Revised Statutes, is amended to  
7 read:

8 14-5312. General powers and duties of guardian

9 A. A guardian of an incapacitated person has the same powers, rights  
10 and duties respecting the guardian's ward that a parent has respecting the  
11 parent's unemancipated minor child, except that a guardian is not liable to  
12 third persons for acts of the ward solely by reason of the guardianship. In  
13 particular, and without qualifying the foregoing, a guardian has the  
14 following powers and duties, except as modified by order of the court:

15 1. To the extent that it is consistent with the terms of any order by  
16 a court of competent jurisdiction relating to detention or commitment of the  
17 ward, the guardian is entitled to custody of the person of the ward and may  
18 establish the ward's place of abode within or without this state.

19 2. If entitled to custody of the ward the guardian shall make  
20 provision for the care, comfort and maintenance of the ward and, whenever  
21 appropriate, arrange for the ward's training and education. Without regard  
22 to custodial rights of the ward's person, the guardian shall take reasonable  
23 care of the ward's clothing, furniture, vehicles and other personal effects  
24 and commence protective proceedings if other property of the ward is in need  
25 of protection.

26 3. A guardian may give any consents or approvals that may be necessary  
27 to enable the ward to receive medical or other professional care, counsel,  
28 treatment or service.

29 4. If no conservator for the estate of the ward has been appointed,  
30 the guardian may:

31 (a) Institute proceedings to compel any person under a duty to support  
32 the ward or to pay sums for the welfare of the ward to perform the ~~guardian's~~  
33 SUCH PERSON'S duty.

34 (b) Receive money and tangible property deliverable to the ward and  
35 apply the money and property for support, care and education of the ward, but  
36 the guardian may not use funds from his ward's estate for room and board the  
37 guardian or the guardian's spouse, parent or child has furnished the ward  
38 unless a charge for the service is approved by order of the court made upon  
39 notice to at least one of the next of kin of the ward, if notice is  
40 possible. He must exercise care to conserve any excess for the ward's needs.

41 5. A guardian is required to report the condition of the ward and of  
42 the estate that has been subject to the guardian's possession or control, as  
43 required by the court or court rule.

44 6. If a conservator has been appointed, all of the ward's estate  
45 received by the guardian in excess of those funds expended to meet current

1 expenses for support, care and education of the ward shall be paid to the  
2 conservator for management as provided in this chapter and the guardian must  
3 account to the conservator for funds expended.

4 7. If appropriate, a guardian shall encourage the ward to develop  
5 maximum self-reliance and independence and shall actively work toward  
6 limiting or terminating the guardianship and seeking alternatives to  
7 guardianship.

8 8. A guardian shall find the most appropriate and least restrictive  
9 setting for the ward consistent with the ward's needs, capabilities and  
10 financial ability.

11 9. A guardian shall make reasonable efforts to secure appropriate  
12 medical and psychological care and social services for the ward.

13 10. A guardian shall make reasonable efforts to secure appropriate  
14 training, education and social and vocational opportunities for his ward in  
15 order to maximize the ward's potential for independence.

16 11. In making decisions concerning his ward, a guardian shall take into  
17 consideration the ward's values and wishes.

18 12. The guardian is authorized to act pursuant to title 36, chapter 32.

19 13. The guardian of an incapacitated adult who has a developmental  
20 disability as defined in section 36-551 shall seek services that are in the  
21 best interest of the ward, taking into consideration:

22 (a) The ward's age.

23 (b) The degree or type of developmental disability.

24 (c) The presence of other handicapping conditions.

25 (d) The guardian's ability to provide the maximum opportunity to  
26 develop the ward's maximum potential, to provide a minimally structured  
27 residential program and environment for the ward and to provide a safe,  
28 secure, and dependable residential and program environment.

29 (e) The particular desires of the individual.

30 B. Any guardian of a ward for whom a conservator also has been  
31 appointed shall control the custody and care of the ward and is entitled to  
32 receive reasonable sums for the guardian's services and for room and board  
33 furnished to the ward as agreed upon between the guardian and the conservator  
34 if the amounts agreed upon are reasonable under the circumstances. The  
35 guardian may request the conservator to expend the ward's estate by payment  
36 to third persons or institutions for the ward's care and maintenance.

37 Sec. 12. Title 14, chapter 6, article 1, Arizona Revised Statutes, is  
38 amended by adding sections 14-6102 and 14-6103, to read:

39 14-6102. Nonprobate transferees; liability for creditor claims  
40 and statutory allowances

41 A. EXCEPT AS OTHERWISE PROVIDED BY LAW, A TRANSFEEE OF A NONPROBATE  
42 TRANSFER IS SUBJECT TO LIABILITY TO THE DECEDENT'S PROBATE ESTATE FOR ALLOWED  
43 CLAIMS AGAINST THE DECEDENT'S PROBATE ESTATE AND STATUTORY ALLOWANCES TO THE  
44 DECEDENT'S SPOUSE AND CHILDREN TO THE EXTENT THE DECEDENT'S PROBATE ESTATE  
45 IS INSUFFICIENT TO SATISFY THOSE CLAIMS AND ALLOWANCES. THE LIABILITY OF A

1 NONPROBATE TRANSFEREE MAY NOT EXCEED THE VALUE OF NONPROBATE TRANSFERS  
2 RECEIVED OR CONTROLLED BY THAT TRANSFEREE.

3 B. NONPROBATE TRANSFEREES ARE LIABLE FOR THE INSUFFICIENCY DESCRIBED  
4 IN SUBSECTION A OF THIS SECTION IN THE FOLLOWING ORDER:

5 1. AS PROVIDED IN THE DECEDENT'S WILL OR ANY OTHER GOVERNING  
6 INSTRUMENT.

7 2. TO THE EXTENT OF THE VALUE OF THE NONPROBATE TRANSFER RECEIVED OR  
8 CONTROLLED BY THE TRUSTEE OF A TRUST SERVING AS THE PRINCIPAL NONPROBATE  
9 INSTRUMENT IN THE DECEDENT'S ESTATE PLAN AS SHOWN BY ITS DESIGNATION AS  
10 DEVISEE OF THE DECEDENT'S RESIDUARY ESTATE OR BY OTHER FACTS OR  
11 CIRCUMSTANCES.

12 3. OTHER NONPROBATE TRANSFEREES, IN PROPORTION TO THE VALUES RECEIVED.

13 C. UNLESS OTHERWISE PROVIDED BY THE TRUST INSTRUMENT, INTERESTS OF  
14 BENEFICIARIES IN ALL TRUSTS THAT INCUR LIABILITIES UNDER THIS SECTION ABATE  
15 AS NECESSARY TO SATISFY THE LIABILITY AS IF ALL OF THE TRUST INTERMENTS WERE  
16 A SINGLE WILL AND THE INTEREST WERE DEVISES UNDER IT.

17 D. A PROVISION MADE IN ONE INSTRUMENT MAY DIRECT THE APPORTIONMENT OF  
18 THE LIABILITY AMONG THE NONPROBATE TRANSFEREES TAKING UNDER THAT OR ANY OTHER  
19 GOVERNING INSTRUMENT. IF A PROVISION IN ONE INSTRUMENT CONFLICTS WITH A  
20 PROVISION IN ANOTHER INSTRUMENT, THE LATER INSTRUMENT PREVAILS.

21 E. ON DUE NOTICE TO A NONPROBATE TRANSFEREE, THE LIABILITY IMPOSED BY  
22 THIS SECTION IS ENFORCEABLE IN PROCEEDINGS IN THIS STATE, WHEREVER THE  
23 TRANSFEREE IS LOCATED.

24 F. A PROCEEDING UNDER THIS SECTION MAY NOT BE COMMENCED UNLESS THE  
25 PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE HAS RECEIVED FROM THE  
26 SURVIVING SPOUSE OR A CHILD TO THE EXTENT THAT STATUTORY ALLOWANCES ARE  
27 AFFECTED, OR FROM A CREDITOR, A WRITTEN DEMAND FOR THE PROCEEDING. IF THE  
28 PERSONAL REPRESENTATIVE DECLINES OR FAILS TO COMMENCE A PROCEEDING AFTER  
29 DEMAND, A PERSON MAKING THE DEMAND MAY COMMENCE THE PROCEEDING IN THE NAME  
30 OF THE DECEDENT'S ESTATE, AT THE EXPENSE OF THE PERSON MAKING THE DEMAND AND  
31 NOT OF THE ESTATE. A PERSONAL REPRESENTATIVE WHO DECLINES IN GOOD FAITH TO  
32 COMMENCE A REQUESTED PROCEEDING INCURS NO PERSONAL LIABILITY FOR DECLINING.

33 G. A PROCEEDING UNDER THIS SECTION MUST BE COMMENCED WITHIN TWO YEARS  
34 AFTER THE DECEDENT'S DEATH, BUT A PROCEEDING ON BEHALF OF A CREDITOR WHOSE  
35 CLAIM WAS ALLOWED AFTER PROCEEDINGS CHALLENGING DISALLOWANCE OF THE CLAIM MAY  
36 BE COMMENCED WITHIN SIXTY DAYS AFTER FINAL ALLOWANCE OF THE CLAIMS.

37 H. UNLESS A WRITTEN NOTICE ASSERTING THAT A DECEDENT'S PROBATE ESTATE  
38 IS INSUFFICIENT TO PAY ALLOWED CLAIMS AND STATUTORY ALLOWANCES HAVE BEEN  
39 RECEIVED FROM THE DECEDENT'S PERSONAL REPRESENTATIVE, THE FOLLOWING RULES  
40 APPLY:

41 1. PAYMENT OR DELIVERY OF ASSETS BY ANY FINANCIAL INSTITUTION,  
42 REGISTRAR OR OTHER OBLIGOR TO A NONPROBATE TRANSFEREE IN ACCORDANCE WITH THE  
43 TERMS OF THE GOVERNING INSTRUMENT CONTROLLING THE TRANSFER RELEASES THE  
44 OBLIGOR FROM ALL CLAIMS FOR AMOUNTS PAID OR ASSETS DELIVERED.

2. A TRUSTEE RECEIVING OR CONTROLLING A NONPROBATE TRANSFER IS RELEASED FROM LIABILITY UNDER THIS SECTION ON ANY ASSETS DISTRIBUTED TO THE TRUST'S BENEFICIARIES. EACH BENEFICIARY TO THE EXTENT OF THE DISTRIBUTION RECEIVED BECOMES LIABLE FOR THE AMOUNT OF THE TRUSTEE'S LIABILITY ATTRIBUTABLE TO THAT ASSET IMPOSED BY SUBSECTIONS B AND C OF THIS SECTION.

1. FOR THE PURPOSES OF THIS SECTION A NONPROBATE TRANSFER IS A VALID TRANSFER EFFECTIVE AT DEATH, OTHER THAN A TRANSFER OF A SURVIVORSHIP INTEREST IN A JOINT TENANCY OF REAL ESTATE, BY A TRANSFEROR WHOSE LAST DOMICILE WAS IN THIS STATE, AND TO THE EXTENT THAT THE TRANSFEROR IMMEDIATELY BEFORE DEATH HAD POWER, ACTING ALONE, TO PREVENT THE TRANSFER BY REVOCATION OR WITHDRAWAL AND TO INSTEAD USE THE PROPERTY FOR THE BENEFIT OF THE TRANSFEROR OR APPLY IT TO DISCHARGE CLAIMS AGAINST THE TRANSFEROR'S PROBATE ESTATE. WITH RESPECT TO MULTIPLE PARTY ACCOUNTS, THE PORTION OF THE ACCOUNT THAT IS A NONPROBATE TRANSFER IS THAT PORTION OF THAT ACCOUNT TO WHICH THE DECEDENT WAS BENEFICIALLY ENTITLED IMMEDIATELY BEFORE DEATH PURSUANT TO SECTION 14-6211.

14-6103. Notice of death of settlor; filing claim against trust estate

A. AFTER THE DEATH OF THE SETTLOR THE TRUSTEE OF A NONTESTAMENTARY TRUST MAY NOTIFY KNOWN CREDITORS PURSUANT TO SECTION 14-3801, SUBSECTION B AND MAY PUBLISH NOTICE TO CREDITORS PURSUANT TO SECTION 14-3801, SUBSECTION A.

B. A CLAIM AGAINST THE TRUST ESTATE THAT AROSE BEFORE THE SETTLOR'S DEATH, INCLUDING CLAIMS OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, WHETHER DUE OR TO BECOME DUE, ABSOLUTE OR CONTINGENT, LIQUIDATED OR UNLIQUIDATED, FOUNDED ON CONTRACT, TORT OR OTHER LEGAL BASIS, IF NOT BARRED AGAINST THE TRUST ESTATE BY ANY OTHER STATUTE OF LIMITATIONS OR NONCLAIM STATUTE, ARE BARRED AGAINST THE TRUST ESTATE, THE TRUSTEE AND THE BENEFICIARIES OF THE TRUST, UNLESS PRESENTED WITHIN THE TIME PRESCRIBED IN THE WRITTEN NOTICE FOR CREDITORS WHO ARE GIVEN ACTUAL NOTICE, OR WITHIN THE TIME PRESCRIBED IN THE PUBLISHED NOTICE FOR CREDITORS WHO ARE GIVEN NOTICE BY PUBLICATION.

C. A CLAIM UNDER THIS SECTION MAY BE PRESENTED AS FOLLOWS:

1. THE CLAIMANT MAY DELIVER OR MAIL TO THE TRUSTEE A WRITTEN STATEMENT OF THE CLAIM INDICATING THE INFORMATION PRESCRIBED IN SECTION 14-3804.

2. IF THE TRUSTEE HAS DISTRIBUTED THE TRUST ESTATE TO BENEFICIARIES OF THE TRUST, THE TRUSTEE SHALL MAIL OR DELIVER THE CLAIM TO ANY BENEFICIARY THAT MAY BE LIABLE FOR THE CLAIM BECAUSE OF THE RECEIPT OF TRUST ASSETS BY THAT BENEFICIARY.

3. IF A CLAIM IS PRESENTED IN A TIMELY MANNER, SECTION 14-6102 APPLIES.

D. THE TRUSTEE IS NOT LIABLE TO A CREDITOR OR TO ANY BENEFICIARY OF THE TRUST FOR GIVING OR FAILING TO GIVE NOTICE UNDER THIS SECTION.

1       Sec. 13. Section 14-6214, Arizona Revised Statutes, is amended to  
2 read:

3       14-6214. Accounts; transfers; nontestamentary effect

4       ~~Except as provided by section 14-6215;~~ A transfer of an account  
5 pursuant to section 14-6212 is effective by reason of the terms of the  
6 account involved and is not testamentary or subject to chapters 1 through 4  
7 of this title.

8       Sec. 14. Repeal

9       Sections 14-6215 and 14-6309, Arizona Revised Statutes, are repealed.

10       Sec. 15. Effect of act on domestic relations agreement or order

11       This act does not affect the rights of any person under a domestic  
12 relations agreement or order that was in effect before the effective date of  
13 this act.

APPROVED BY THE GOVERNOR APRIL 4, 2001.

FILED BY THE SECRETARY OF STATE APRIL 4, 2001.

Passed the House January 30, 2001,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

[Signature]  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate March 28, 2001,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

[Signature]  
President of the Senate

Charmian Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29 day of March, 2001,

at 1:30 o'clock P M.

Stacy Marshall  
Secretary to the Governor

Approved this 4 day of

April, 2001,

at 10:09 o'clock A M.

[Signature]  
Governor of Arizona

H.B. 2279

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 4 day of April, 2001,

at 4:50 o'clock P M.

[Signature]  
Secretary of State